

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK  
UTICA DIVISION

In re

JOSE L. LIZARDI,

Debtor.

Chapter 11  
Case No. 12-62352

### **MOTION FOR RELIEF FROM AUTOMATIC STAY**

JOSE L. LIZARDI ("Debtor"), by his attorneys, Nolan & Heller, LLP, hereby moves this Court for an Order pursuant to 11 U.S.C. Section 362(d)(1), and respectfully states as follows:

#### **Parties and Jurisdiction**

1. Debtor filed a voluntary petition herein under Chapter 11 of the U.S. Bankruptcy Code (the "Code") on December 20, 2012, and is a debtor in possession under the Code.
2. The Debtor is a physician and the sole proprietor of a medical practice in Potsdam, New York.

#### **Relief Requested and the Basis Therefor**

3. This is a motion pursuant to Bankruptcy Code section 362(d) for relief from the automatic stay. This Court has jurisdiction over this Bankruptcy case and this motion pursuant to 28 U.S.C. sections 157 and 1334. This motion constitutes a core proceeding pursuant to 28 U.S.C. section 157(b)(2)(G).
4. A judgment was entered against the Debtor in favor of Susan Skelly-Hand and Patrick Hand, as Parents and Natural Guardians of Rachel Elizabeth Hand, in the New York State Supreme Court for St. Lawrence County on November 19, 2012 in the amount of \$3,152,572.90 (the "Judgment"). The Debtor has filed an appeal of the Judgment in the Appellate Division of the New

York State Supreme Court, and intends to perfect and to prosecute the appeal. The appeal seeks, *inter alia*, reversal of, or reduction in the amount of, the Judgment.

5. The Appellate Division has scheduled a mandatory settlement conference for January 14, 2013.

6. Appeals in actions against a debtor are subject to the automatic stay. *See, Koolik v. Markowitz*, 40 F.3d 567 (2d Cir. N.Y. 1994).

7. The outcome of the appeal is material to the bankruptcy case and the Debtor's ability to pay creditors under a Chapter 11 plan.

8. Accordingly, it is respectfully submitted that cause exists for granting relief from the automatic stay to allow the appeal to proceed.

**WHEREFORE**, the Debtor respectfully requests that the Court enter an Order terminating the automatic stay of 11 U.S.C. §362 of the Bankruptcy Code so as to permit the prosecution of his appeal of the Judgment and all related matters, and granting to the Debtor such other and further relief as this Court may deem just and proper.

Dated: January 7, 2013  
Albany, New York

NOLAN & HELLER, LLP

By: 

Justin A. Heller, Esq.

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